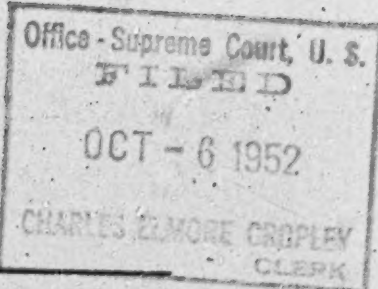


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Supreme Court of the United States

OCTOBER TERM, 1952

No. 167

UNITED STATES OF AMERICA, Appellant,

v.

JOSEPH KAHRIGER, Appellee.

**MOTION FOR LEAVE TO FILE A BRIEF
AS AMICUS CURIAE**

**ARCHIE ELLEDGE,
JOE W. JOHNSON,
RICHMOND RUCKER,**
Counsel for Movants.

IN THE
Supreme Court of the United States

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v.

JOSEPH KAHRIGER, *Appellee*.

MOTION FOR LEAVE TO FILE A BRIEF
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TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES
AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT
OF THE UNITED STATES:

Now comes James W. Penn, Jessie Lee Barnes, Parnell Wade Barnes, Jesse Campbell, Lewis Fleming, William Lee Glenn, Virginia Johnson, Walter Lee Kiser, Wade Lampkins, Elijah Morgan, and Julius White Cornell, and respectively move this Court, pursuant to Rule 27, paragraph 9, of the Rules of this Court, for leave to file a brief in this case *amicus curiae*. The consent of the appellant, United States of America, for filing this brief has been obtained and filed with the Clerk of this Court. The consent of the attorney for the appellee was requested but was refused. The interests of James W. Penn, Jessie Lee Barnes, Parnell Wade Barnes, Jesse Campbell, Lewis

Fleming, William Lee Glenn, Virginia Johnson, Walter Lee Kiser, Wade Lampkins, Elijah Morgan and Julius White Cornell, and their reasons for asking for leave to file a brief *amicus curiae* are set forth below.

Movants are defendants in cases, consolidated for the purpose of trial, involving the validity of the identical act presented in the above entitled cause, said act being Internal Revenue Code, 26 U.S.C.A., Sec. 3285, et seq. These cases have been appealed by the movants from sentences imposed by the United States District Court for the Middle District of North Carolina to the United States Court of Appeals for the Fourth Circuit. On the 19th day of August, 1952, Honorable John J. Parker, Chief Judge of said Circuit Court, signed and entered an order deferring the hearing of the cases of the movants until after the filing of the opinion of this Court in the above entitled case; *that six of the above named defendants were sentenced by the Judge of the Middle District Court of North Carolina to the Federal Penitentiary.*

In order to properly protect their interests, the movants, through their counsel, are desirous of presenting other grounds than those announced by the District Court for the Eastern District of Pennsylvania in declaring the act in question invalid. The movants propose to submit to this Court, if they be granted leave to file an *amicus curiae* brief, arguments and authority in support of the following questions:

(1) Disregarding the designation of the act and viewing its substance and application, the Court will find the act is a penalty for violation of state law and, therefore, invalid as beyond the limit of federal powers to enact.

(2) A license denotes authorization; therefore, the attacks made upon a similar act in the License Tax Cases (5 Wall 462, 18 L. Ed. 497), although rejected there, should, it is submitted, have been sustained.

(3) Sound public policy dictates that the processes of the court should not be employed to enforce the provisions of the act, because the end sought to be attained thereby does not justify the reprehensible means.

(4) The act is invalid because its inquisitorial provi-

sions violate the Bill of Rights enumerated in the unreasonable search and seizure clause of the Fourth Amendment and the self-incrimination clause of the Fifth Amendment.

With, perhaps, the exception of the first question mentioned, the movants entertain serious doubt that the other questions will be submitted for consideration of the Court. Accordingly, this Court will thereby be deprived of additional authority and argument calculated to sustain the District Court of Pennsylvania in declaring the Act invalid.

It is submitted that a sound public policy is involved in the case before the Court—a public policy that raises the question as to whether or not the processes of the Court should be employed to attain an end regardless of the means, as well as the freedom of, at least six defendants. Manifestly, the interests of these movants will be greatly impaired and jeopardized without representation before this Court.

Therefore, we strenuously urge the Court to grant us permission to file amicus curiae brief and to argue the case orally before the Court.

Respectfully submitted,

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DATED:

September 26, 1952